

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE  
February 7, 2007 Session

**IN THE MATTER OF: ADC, DOB 12/1/1997, AZW, DOB 3/10/2000  
DANNY L. CARROLL v. GENA R. WILLIAMSON**

**Direct Appeal from the Juvenile Court for Blount County  
No. 17246 Hon. William Terry Denton, Judge**

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**No. E2006-00771-COA-R3-PT - FILED MARCH 7, 2007**

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The Trial Court terminated the petitioner's parental rights to the two children. On appeal, we vacate the Trial Court's Judgment and remand, with instruction for conducting a new trial.

**Tenn. R. App. P.3 Appeal as of Right; Judgment of the Juvenile Court vacated.**

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and SHARON G. LEE, J., joined.

Kristin Godsey, Powell, Tennessee, for appellant.

Charles A. Carpenter, Maryville, Tennessee, for appellee.

**OPINION**

Petitioner, Danny L. Carroll, acting *pro se*, filed a Petition for Rights of Non-Custodial Parent in the Juvenile Court of Blount County, Tennessee, naming the mother as respondent, and alleged that the parties had two children, ADC and AZW. The father filed a Uniform Affidavit of Indigency, stating he had no assets or income, and the record establishes that he was incarcerated at the time of filing the action. The Court found the petitioner to be indigent and ordered appointed counsel. The mother, responding, filed a Motion to Sever and Terminate Parental Rights, but did not allege any specific grounds.

The court entered a Final Judgment and Termination of Parental Rights on February 22, 2006, stating that a hearing was held on January 23, 2006, and that both parties were present with counsel. The Court found that clear and convincing evidence established that the father had

abandoned the children as defined in Tenn. Code Ann. §36-1-102 by willfully failing to make support payments and by willfully failing to visit, and that termination was in the children's best interests. The father has appealed, and after various motions were filed, this Court ordered the parties to cooperate and file a detailed Joint Statement of the Evidence of the trial. The parties filed a Joint Statement with the Court, and the Court certified it to be accurate.

The father's appeal insists that the Trial Court's judgment should be vacated because there was no court reporter/transcript of the trial, and that the Trial Court erred in failing to appoint a guardian ad litem for the children.

We pretermitt the issue of whether the transcript of evidence was a "record of sufficient completeness" to allow this Court to perform the necessary review, in order to satisfy constitutional safeguards. *See, In re JDW*, 2000 WL 1156628 (Tenn. Ct. App. Aug. 16, 2000), because the second issue is determinative of this appeal.<sup>1</sup>

The father asserts that it was error for the Trial Court to fail to appoint a guardian ad litem, since the termination was contested. As we have previously held, the appointment of a guardian ad litem is mandatory in a proceeding to terminate parental rights, unless the termination is uncontested. *See In re The Adoption of a Male Child, DPE*, 2006 WL 2417578 (Tenn. Ct. App. Aug. 22, 2006); Tenn. S. Ct. R. 13; *see also In re TBL*, 2006 WL 1521122 (Tenn. Ct. App. June 2, 2006). This is mandatory even if no one requests that a guardian ad litem be appointed. *Id.* Since this was a contested case, the failure to appoint a guardian ad litem to represent the children's interests require us to vacate the Trial Court's Judgment and remand for a trial. Upon remand, the Trial Court will appoint a guardian ad litem, in addition to causing a sufficient record of the trial to be made for review on appeal.

We vacate the Judgment of the Trial Court terminating the father's parental rights and remand, with the cost of the appeal assessed to Gena R. Williamson.

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HERSCHEL PICKENS FRANKS, P.J.

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<sup>1</sup>As Judge Swiney observed in *LDN et al., v. RBW et al.*, 2006 WL 9275 (Tenn. Ct. App. Feb. 17, 2006), "a parental rights termination case where a Statement of the Evidence would be sufficient would be extremely rare and the best way to proceed is by providing this Court with a complete transcript of all evidence."